

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PHIL NEUMAN,

Plaintiff,

20-cv-10723 (PKC)

-against-

ORDER

JOSE GARCIA,

Defendant.

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CASTEL, U.S.D.J.

The Case Management Order provides at paragraph 8 that “any motion for summary judgment will be deemed untimely unless a Pre-Motion Letter relating thereto is filed no later than fourteen (14) days after the date set by the Court for the close of fact discovery.”

The Court is well aware of the various extensions of the date set in paragraph 5 for the conclusion of fact discovery and the automatic effect of those extensions on extending the date for a Pre-Motion letter pursuant to paragraph 8. If Garcia’s position is that any grant of an extension of the date in paragraph 5 of the November 9, 2022 Order, entirely vitiated paragraph 8 of that Order and renders it a nullity, he is wrong.

The Court extended the date for completion of discovery by two months in the Order of February 3, 2023 (ECF 133). Thereafter, the Court issued an Order allowing certain discovery to be completed within 30 days from the date of the March 6, 2023 Order. (ECF 143.) With the end of fact discovery near at hand, the Court set a schedule for Final Pre-Trial submissions and a Final Pre-Trial Conference. (Minute Entry, March 30, 2023.) The Court has granted adjournments, including an extension for expert discovery and final pretrial submissions. (ECF 147, 151 & 162.) In an October 4, 2023 Order, the Court ordered Garcia’s deposition to go

forward on October 19, 2023. (ECF 160.) The Court has not extended any fact discovery beyond October 19, 2023. The Court never modified paragraph 8 of the November 9, 2022 Order, triggering the required pre-motion letter from the date set by the Court for the close of fact discovery. The Court never extended the date for a pre-motion letter to a date after the close of expert discovery.<sup>1</sup> Rule 16(c)(2)(E) gives the Court the authority to determine “the appropriateness and timing of summary adjudication under Rule 56,” it has done so and neither the Rule nor any Order of this Court gives the defendant or the parties collectively the power to alter the Court’s Order by statement or fiat.

Final Pre-Trial Submissions and Final Pre-Trial Conference remain as scheduled.

Defendant’s letter motion (ECF 165) for reconsideration of the Order of December 5, 2023 (ECF 164) is DENIED.

SO ORDERED.

  
P. Kevin Castel  
United States District Judge

Dated: New York, New York  
December 7, 2023

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<sup>1</sup> Reading the December 1, 2023 letter of defendant Garcia (ECF 163), the proposed motion does not rely upon any referenced opinion of an expert.